

The opinion in support of the decision being entered today was **not** written  
for publication and is **not** binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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**Ex parte** Thomas Fiedler

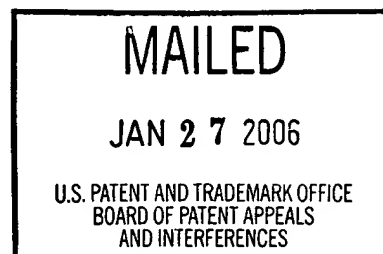
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Appeal No. 2005-2619  
Application No. 09/734,826

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ON BRIEF

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Before THOMAS, DIXON, and GROSS, **Administrative Patent Judges**.  
DIXON, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 1-6,  
which are all of the claims pending in this application.

We AFFIRM.

## BACKGROUND

Appellant's invention relates to a speech command-controllable electronic apparatus preferably provided for co-operation with a data network. A copy of representative claim 1 is reproduced below.

1. An electronic apparatus (1) comprising functions which may be activated by control commands of which each one is formed at least by one spoken word from a user of the apparatus (1), and including speech signal input means (4) for inputting speech signals into the apparatus (1) which represent the spoken speech commands and including control means (14) connected to the speech signal input means (4) by which control means (14) can be generated control data (CD2) representing a speech command, and including halting means (3) to which the speech signal input means (4) are mechanically connected, so that the speech signal input means (4) in the presence of a user take up a certain position relative to the user's mouth, characterized in that the apparatus (1) includes guide means (25) by which the halting means (3) are at least in essence guided in vertical direction and in that the apparatus (1) includes adjusting means (28) by which the halting means (3) can be adjusted along the guide means (25), and in that picture recording means (31) are provided which are mechanically connected to the halting means (3) and by which a certain body area of a user can be recorded, and in that picture evaluation means (33) are provided by which can be established whether the recorded body area lies within a nominal range (XY) and in that in the event of deviations of the position of the recorded body area relative to the nominal range (XY) the adjusting means (28) are provided for adjusting the halting means (3) and, consequently, the connected speech signal input means and picture recording means (31) can be driven by the picture evaluation means (33) to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY).

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Uehara

4,961,177

Oct. 2, 1990

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Shirai Satoru et al. (Shirai)<sup>1</sup> JP 11-249227 Sep. 17, 1999

Schaffrina DE 004028670 A1 Mar. 12, 1992  
(We will refer to the pagination of the translation dated 8/12/2003 from EAST)

Schneiderman, "Touchscreens now offer compelling uses," IEEE Software, Vol. 8, No. 2, pp. 93-94, March 1991.

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Uehara in view Shirai and Schaffrina. Claim 6 stands rejected under 35 U.S.C. § 103(a) over Uehara in view Shirai, Schaffrina, and Schneiderman.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the answer (mailed July 28, 2004) for the examiner's reasoning in support of the rejections, and to the brief (filed June 14, 2004) for appellant's arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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<sup>1</sup> We will follow the examiner's and appellant's labels to this reference for uniformity and clarity.

Only those arguments actually made by appellant have been considered in this decision. Arguments that appellant could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)]. We note that appellant has elected to group ALL claims as standing or falling together at page 4 of the Brief. Therefore, we select independent claim 1 and address appellant's arguments thereto.

### 35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a ***prima facie*** case of obviousness. **See *In re Rijckaert***, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A ***prima facie*** case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See *In re Lintner***, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is ***prima facie*** obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See *In re Fine***, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must

rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999-1000,

50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the language of independent claim 1 as to recited limitations. The examiner maintains that Uehara teaches all of the limitations but for the picture recording means mechanically connected to the halting means . . . .” (Answer at page 5). The examiner relies upon the teachings of Shirai for suggesting this limitation. (Answer at page 5). We agree with the examiner and find that while Uehara teaches adjusting the positioning and direction of the microphone for the location of the mouth along with the detection of the position mouth, that it would have similarly been obvious to one skilled in the art to have attached both the camera and the microphone systems to the single movable mechanism as taught and fairly suggested by Shirai. (Shirai at para. [0009] and abstract). While Shirai is primarily interested in the movement of only the camera to issue the cards, we agree with the examiner that Schaffrina teaches and suggests that the height of the video phone module is adjusted for the height of the user while the microphone and speakers are not shown in the drawings, they are on either side of the screen/monitor. (Schaffrina at page 3 and abstract). We agree with the examiner that Schaffrina teaches and fairly suggests the movability of the audio and video

components together as a unit. (Answer at page 6). Therefore, we agree with the examiner that the combination of Uehara, Shirai and Schaffrina would have taught the invention as recited in independent claim 1 and that the three teachings are reasonably related so that it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the relevant teachings. Therefore, we find that the examiner has established a ***prima facie*** case of obviousness of independent claim 1.

We therefore look to appellant's responsive arguments to either rebut or show error in the ***prima facie*** case of obviousness. Appellant argues that the Uehara does not teach the adjustment of the picture recording means so that the recorded body area lies within the nominal range. (Brief at page 5). We agree with appellant that each of the individual teachings does not teach the claimed invention, but find that the combination of Uehara, Shirai and Schaffrina would have suggested that the recording means move to within a range as identified by Uehara for the microphone adjustment as modified by the servo-driven adjustment of Shirai to replace the servo-mechanism of Uehara with the combined housing of the audio and visual components of Schaffrina. (Answer at pages 10-11). Therefore, we find that the combined teachings of Uehara, Shirai and Schaffrina would have taught and fairly suggested the invention recited in independent claim 1.

Appellant argues that if Uehara detects a person's mouth and always moves the camera to the center of the detected mouth, there is no disclosure of a nominal range

or of adjusting in the event of deviations. (Brief at page 7). We disagree with appellant and find that Uehara discloses that the servo-mechanism 14 operates to adjust the direction of the microphone 12 within a range which covers the voice input area B. While Uehara suggests movement of the microphone to the singular position of the mouth, we find that this position would have to be within a range of tolerance which would be set by the limitations of the servo-mechanism that drives and sets the position. Otherwise, the servo system may never be able to achieve the actual calculated position. Therefore, we find there to be a nominal range around every value for the physical constraints of the mechanical systems. Additionally, the examiner has identified the picture processing as shown in Figure 3 of Uehara as identifying transition points which would identify a range for the mouth between the neck/chin and the nose luminances. (Answer at pages 5 and 12-13). Here, we find this to also be positional determination which would then require adjustment of the directional microphone if the range was not a match to that of the microphone at that time. Therefore, we do not find the argument persuasive. Appellant argues that the examiner is trying to bypass the troublesome claim limitations. (Brief at page 7). We disagree and find that the examiner has identified how the combination would have taught and fairly suggested the invention as recited in independent claim 1. Therefore, we do not find the argument persuasive.



Appellant argues that it is not clear how Schaffrina can be fairly said to teach detachment of the Uehara microphone from its tilting servo mechanism and moved into fixed connection with the moveable camera. (Brief at pages 8-9). We find that Schaffrina teaches the co-location of the audio and video component on the single movable housing which would suggest that the microphone of Uehara be co-located with the camera. Therefore, we do not find the argument persuasive.

Appellant argues that Uehara teaches away from modifying the microphone configuration, but appellant does not identify a specific teaching away. (Brief at pages 9-12). Rather, appellant identifies the benefits disclosed by Uehara which we distinguish from a specific teaching away. Therefore, we do not find the argument persuasive.

Appellant argues that Schaffrina fails to disclose that both the camera and the microphone, while fixed to the same vertical translator, can be simultaneously positioned optimally. (Brief at page 10). We do not find this argument commensurate in scope with independent claim 1. Therefore, we do not find the argument persuasive, and we find that appellant has not shown error in the *prima facie* case of obviousness nor adequately rebutted the *prima facie* case. Therefore, we will sustain the rejection of independent claim 1 and dependent claims 2-6 which appellant has elected to group therewith.


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## CONCLUSION

To summarize, the decision of the examiner to reject claims 1-6 under 35 U.S.C. § 103 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

  
JAMES D. THOMAS  
Administrative Patent Judge

  
JOSEPH L. DIXON  
Administrative Patent Judge

*Anita Pellman Gross*  
ANITA PELLMAN GROSS  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

JLD/cam

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